

# House Study Bill 26 - Introduced

HOUSE FILE \_\_\_\_\_

BY (PROPOSED COMMITTEE ON  
HUMAN RESOURCES BILL BY  
CHAIRPERSON MILLER)

## A BILL FOR

1 An Act relating to notice of claim and certificate of merit  
2 requirements in medical malpractice actions.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1     Section 1. NEW SECTION. 147.140 Notice of claim and  
2 certificate of merit requirement.

3     1. Within sixty days of filing a civil action for personal  
4 injury or wrongful death against a licensed health care  
5 provider, based upon the alleged negligence of the licensed  
6 health care provider in the practice of that profession,  
7 a plaintiff shall serve by certified mail, return receipt  
8 requested, a notice of claim upon the licensed health care  
9 provider. The notice of claim shall include a statement of the  
10 theory of liability upon which the cause of action is based  
11 and include a list of all persons to whom notices have been  
12 sent, together with a certificate of merit, if necessary, as  
13 specified in subsection 2.

14     2. *a.* The certificate of merit shall be signed under oath  
15 by an expert who, in the three years preceding the allegedly  
16 negligent act, either practiced or instructed in the same or  
17 substantially similar field of medicine as the defendant.

18     *b.* The certificate of merit shall contain information  
19 relating to all of the following:

20         (1) The expert's name, address, and qualifications.

21         (2) The expert's familiarity with the applicable standard  
22 of care.

23         (3) The expert's statement that the appropriate standard  
24 of care was breached by the health care provider named in the  
25 complaint.

26         (4) The expert's statement of the actions that the health  
27 care provider should have taken or failed to take to have  
28 complied with the standard of care.

29         (5) A statement of the manner in which the breach of the  
30 standard of care was the cause of the injury alleged in the  
31 complaint.

32     *c.* A separate certificate of merit shall be completed for  
33 each defendant named in the notice of claim.

34     *d.* If a plaintiff or plaintiff's counsel asserts in good  
35 faith that the plaintiff has insufficient time to obtain a

1 certificate of merit prior to the expiration of the period of  
2 limitation in subsection 1, the plaintiff shall provide notice  
3 of intent to provide a certificate of merit to the defendant  
4 within sixty days of the date the defendant receives the notice  
5 of the claim.

6 3. Notwithstanding subsection 2, if a plaintiff believes  
7 that a certificate of merit is not necessary because the  
8 plaintiff's cause of action against a health care provider  
9 is based upon a res ipsa loquitur theory of liability which  
10 does not require expert testimony supporting a breach of  
11 the applicable standard of care, the plaintiff shall file a  
12 statement setting forth the basis for the alleged res ipsa  
13 loquitur liability of the health care provider in lieu of the  
14 certificate of merit.

15 4. Except as otherwise provided in this section, the  
16 applicable statute of limitations in a civil cause of action  
17 against a health care provider upon whom a notice of claim is  
18 served pursuant to this section shall be tolled from the date  
19 the notice of claim is mailed.

20 5. If the plaintiff fails to provide a notice of claim and  
21 a certificate of merit, or a statement of the legal theory upon  
22 which the claim is based, the claim shall be dismissed without  
23 prejudice.

24 6. For purposes of this section, "*health care provider*"  
25 means a physician or surgeon, osteopath, osteopathic physician  
26 or surgeon, dentist, podiatric physician, optometrist,  
27 pharmacist, chiropractor, or nurse licensed in this state, a  
28 hospital licensed pursuant to chapter 135B, or a health care  
29 facility licensed pursuant to chapter 135C.

30 EXPLANATION

31 This bill relates to notice of claim and certificate of merit  
32 requirements in an action for medical malpractice.

33 The bill provides that within 60 days of filing a civil  
34 action for personal injury or wrongful death against a  
35 health care provider, based upon the alleged negligence of

1 the licensed health care provider in the practice of that  
2 profession, a plaintiff shall serve by certified mail, return  
3 receipt requested, a notice of claim upon the licensed health  
4 care provider. The notice of claim shall include a statement  
5 of the theory of liability upon which the cause of action is  
6 based and include a list of all persons to whom notices have  
7 been sent, together with a certificate of merit.

8 The bill requires that the certificate of merit shall  
9 meet certain requirements and specifies certain information  
10 that a qualified expert who provides information in the  
11 certificate of merit shall provide. The bill provides that  
12 a separate certificate of merit shall be completed for each  
13 defendant named in the complaint, and that if a plaintiff or  
14 plaintiff's counsel asserts in good faith that the plaintiff  
15 has insufficient time to obtain a certificate of merit prior to  
16 the expiration of the 30-day limitation period, the plaintiff  
17 shall provide notice of intent to provide a certificate of  
18 merit to the defendant within 60 days of the date the defendant  
19 receives the notice of the claim. If a plaintiff believes that  
20 a certificate of merit is not necessary because the plaintiff's  
21 cause of action against a health care provider is based upon a  
22 res ipsa loquitur theory of liability which does not require  
23 expert testimony supporting a breach of the applicable standard  
24 of care, the plaintiff shall file a statement setting forth the  
25 basis for the alleged res ipsa loquitur liability of the health  
26 care provider in lieu of the certificate of merit.

27 The bill further provides that the applicable statute of  
28 limitations in a civil cause of action against a health care  
29 provider upon whom a notice of claim is served shall be tolled  
30 from the date the notice of claim is mailed. In addition,  
31 if the plaintiff fails to provide a notice of claim and a  
32 certificate of merit, or a statement of the legal theory upon  
33 which the claim is based, the claim shall be dismissed without  
34 prejudice.

35 For purposes of the bill, "health care provider" means a

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1 physician or surgeon, osteopath, osteopathic physician or  
2 surgeon, dentist, podiatric physician, optometrist, pharmacist,  
3 chiropractor, or nurse licensed in Iowa, a hospital licensed  
4 pursuant to Code chapter 135B, or a health care facility  
5 licensed pursuant to Code chapter 135C.